

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	WC Docket No. 11-42
Lifeline and Link Up Reform and)	
Modernization)	
)	
Telecommunications Carriers)	WC Docket No. 09-197
Eligible for Universal Service)	
Support)	
)	
Connect America Fund)	WC Docket No. 10-90

TELRITE CORPORATION EMERGENCY PETITION FOR EXTENSION OF WAIVER

Pursuant to section 1.3 of the Federal Communications Commission’s (Commission’s) rules,¹ Telrite Corporation (Telrite or the Company) respectfully submits this Emergency Petition for Extension of Waiver (Petition) for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands.² As the Commission is aware, Hurricanes Irma and Maria caused a veritable “one-two punch” of devastation throughout Puerto Rico and the U.S. Virgin Islands, the likes of which has never been recorded. Months later, it is difficult to ascertain the degree to which persistent power outages and circumscribed mail delivery due to missing roads and mailboxes, among other issues, continue to make recovery challenging for impacted Lifeline subscribers. To the extent the Commission has a better sense of the facts on the ground, its assessment of the situation is almost certain to be more complete than Telrite’s. However, based on available information, Telrite respectfully submits that grant of this Petition is essential to protect low-income consumers in Puerto Rico and the U.S. Virgin Islands from having their vital Lifeline service disconnected at a time when it is needed most. Indeed, de-enrollment of eligible subscribers from the Lifeline

¹ See 47 C.F.R. § 1.3.

² See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Order, DA 17-1066 (WCB rel. Oct. 31, 2017) (PR/USVI Recertification Waiver Extension Order).

program for failure to meet recertification requirements during this emergency based on their inability to comply with technical program rules in the short-term would subject already vulnerable consumers to unnecessary endangerment resulting from the termination of essential communications services.

Telrite therefore respectfully requests that the Wireline Competition Bureau (Bureau)³ expeditiously grant this Petition and extend the temporary waiver of sections 54.405(e)(4) and 54.410(f) of the Commission’s rules for Lifeline subscribers in Puerto Rico who cannot be successfully recertified using Puerto Rico’s “Programa de Asistencia Nutricional” (PAN) database, and for Lifeline subscribers in the U.S. Virgin Islands, until April 30, 2018.

I. BACKGROUND

A. Current Waivers in Puerto Rico and the U.S. Virgin Islands

In recognition of the catastrophic damage caused by Hurricanes Irma and Maria, the Bureau issued multiple waiver orders for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands between early September and late October of 2017. First, on September 7, 2017, the Bureau waived the Lifeline non-usage and recertification requirements (sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission’s rules) for 90 days in response to a petition filed by Telrite⁴ in anticipation of widespread power and network outages, and displacements in Puerto Rico and the U.S. Virgin Islands in the wake of Hurricane Irma.⁵ In a

³ See 47 C.F.R. § 0.91(b) (authorizing the Bureau to “[a]ct on requests for interpretation or waiver of rules”); see also 47 C.F.R. § 0.291(a) (stating that the Bureau has delegated authority to perform all the functions described in section 0.91 of the Commission’s rules, including specifically the authority to act on requests for waiver of the rules).

⁴ See Telrite Corporation Emergency Petition for Temporary Suspension and Waiver, WC Docket Nos. 11-42, 09-197, 10-90 (filed Sept. 6, 2017).

⁵ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Order, DA 17-860 (WCB rel. Sept. 7, 2017) (Hurricane Irma Waiver Order).

subsequent order issued on October 6, 2017, the Bureau extended these waivers (and applied them to certain subscribers in Florida and Georgia) until February 28, 2018 as a result of the even more extensive damage caused by Hurricane Maria.⁶ Finally, on October 31, 2017, the Bureau extended the waiver of the recertification rules for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands until March 31, 2018.⁷ In each of these orders, the Bureau acknowledged that “strict compliance” with the Lifeline program rules would be either “impracticable” or “inconsistent with the public interest” in the wake of these historic natural disasters.⁸ With respect to the waiver of the recertification rules, the orders each provide that at the expiration of the relevant waiver period, subscribers whose service anniversary dates fall during the waiver period will have 60 days to respond to their eligible telecommunications carrier’s (ETC’s) recertification efforts.⁹ Additionally, the Hurricane Irma Waiver Order and Hurricane Maria Waiver Order explain “ETCs in the affected areas that are unable to comply with the Lifeline non-usage and recertification requirements at the end of this period for specific households may request additional, narrowly tailored relief from these requirements from the [Bureau].”¹⁰

B. Devastation Following Hurricanes Irma and Maria in Puerto Rico and the U.S. Virgin Islands

Hurricanes Irma and Maria swept over Puerto Rico and the U.S. Virgin Islands in a period of less than two weeks last fall, leaving behind unprecedented destruction throughout the affected

⁶ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Order, DA 17-984, ¶¶ 10-16 (WCB rel. Oct. 6, 2017) (Hurricane Maria Waiver Order).

⁷ See PR/USVI Recertification Waiver Extension Order.

⁸ See Hurricane Irma Waiver Order ¶ 1; Hurricane Maria Waiver Order ¶ 2; PR/USVI Recertification Waiver Extension Order ¶ 3.

⁹ See Hurricane Irma Waiver Order ¶ 6; Hurricane Maria Waiver Order ¶ 13; PR/USVI Recertification Waiver Extension Order ¶ 7.

¹⁰ Hurricane Irma Waiver Order ¶ 7; Hurricane Maria Waiver Order ¶ 14.

communities. In the months following the storms, media reports have described the gravity of the situation in Puerto Rico, including ongoing struggles for citizens to access basic necessities such as food, water, and electricity. Indeed, as of January 24, 2018, an estimated 450,000 residents on the island of Puerto Rico remained without power.¹¹ The degree to which mail service and other public services have been restored is unclear, as Telrite is unaware of a comprehensive source for road closures and addresses for which mail has been rendered undeliverable due to destroyed roads and mailboxes.

While featured less prominently in the media, the devastation in the U.S. Virgin Islands was equally palpable. Indeed, St. Croix, St. John, and St. Thomas remain part of the “disaster area” identified in the Commission’s most recent status report for areas impacted by Hurricane Maria, with more than 16 percent cell sites remaining out of service on all three islands as of January 29, 2018.¹² With respect to the U.S. Virgin Islands, there is less information available regarding the hardships residents continue to face in the wake of the storms and a protracted recovery period.

Because there is reason to believe that the situation in the U.S. Virgin Islands is comparable to that in Puerto Rico, Telrite includes the U.S. Virgin Islands in its request for additional relief. The Commission may have at its disposal a better accounting of the facts in both

¹¹ See Erin Dooley, “4 Months after Maria, 450K residents of Puerto Rico still without power,” ABC News (Jan. 24, 2018) available at <http://abcnews.go.com/US/months-maria-450k-residents-puerto-rico-power/story?id=52585227>; see also Femmy Irizarry Álvarez, “Rosselló no puede decir cuándo se restablecerá el servicio eléctrico,” *Primera Hora* (Jan. 3, 2018) available at <http://www.primerahora.com/noticias/gobierno-politica/nota/rossellonopuededecircuandoserestableceraelservicioelectrico-1262098/> (explaining that the governor of Puerto Rico cannot predict when electricity will be restored to areas on the island that remain without power).

¹² See FCC, “Communications Status Report for Areas Impacted by Hurricane Maria” (Jan. 29, 2018).

places. However, because it is Telrite's sense based on media coverage and anecdotal evidence based on contacts with people on the ground in Puerto Rico that the impacts of the storms continue to make normal everyday life exceptionally difficult, Telrite respectfully submits that the situation requires additional relief.

II. REQUEST FOR EXTENSION OF WAIVER

Telrite supports the Commission's efforts to curb waste, fraud and abuse in the Lifeline program and expends significant time and resources to comply with the Lifeline program rules, including the recertification requirements. However, neither the Commission's rules nor its orders related to the Lifeline program contemplate potential difficulties that consumers may have responding to recertification requests following a natural disaster such as Hurricanes Irma and Maria. Given the magnitude of potential harm to low-income consumers that could result if the recertification rules are routinely enforced against Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands in the midst of this lengthy and arduous recovery period, Telrite respectfully requests that the Bureau extend the temporary waiver of sections 54.405(e)(4) and 54.410(f) of the Commission's rules for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands until April 30, 2018.¹³ Notably, this temporary waiver extension request is narrowly tailored, as a waiver is no longer necessary with respect to subscribers who can be successfully recertified using Puerto Rico's PAN database, which is now accessible. The request for additional relief is needed for those subscribers who cannot be recertified using the PAN database and instead must be recertified through a Puerto Rico Telecommunications Regulatory Board mandated process which requires the collection of physical proof of program eligibility. This process typically involves

¹³ Consistent with the previous waiver orders, the extension should allot Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands 60 days to complete recertification after the waiver period.

sending through the U.S. Mail a form to a subscriber and the subscriber's return via U.S. Mail of a completed form along with a copy of proof of eligibility.

Without the requested waiver extension, significant numbers of Lifeline subscribers could be de-enrolled from Lifeline at a time when they need essential communications service the most, starting this April. As noted above, with respect to Puerto Rico, hundreds of thousands of residents remain without power almost five months after the storms. Damage to homes and other infrastructure such as roads also continues to disrupt daily life throughout the island, including mail delivery.¹⁴ Communities in the U.S. Virgin Islands are facing similar destruction and disruptions.¹⁵

Telrite respectfully submits that under these conditions, it is both unrealistic and counter to the public interest to strictly enforce the Lifeline recertification rules in Puerto Rico and the U.S. Virgin Islands in the short term. Indeed, during this recovery process, it will be all but impossible for ETCs to send notices regarding recertification to subscribers with any degree of certainty that the notices will actually reach them.¹⁶ Return of such notices (with proof of eligibility in Puerto

¹⁴ Telrite understands that while post offices generally are operational, mail delivery remains a challenge because many roads and homes were destroyed during the storms, and even among the homes that remain standing, many are significantly damaged such that the owners or occupants have been forced to seek shelter elsewhere, and may not be receiving mail at their temporary address.

¹⁵ See, e.g., "Full Text of Gov. Mapp's State of the Territory Address," St. Thomas Source (Jan. 23, 2018) available at <https://stthomassource.com/content/2018/01/23/14825/> (noting, for example, that \$420 million in property and casualty insurance claims have been disbursed, representing approximately 30 percent of claims).

¹⁶ A portion of subscribers in Puerto Rico are recertified by querying the PAN database to verify the subscribers' continued participation in the Supplemental Nutrition Assistance Program (SNAP). However, subscribers who are not verified through the PAN database must be contacted on an individual-case-basis to complete recertification, including providing proof of their continued eligibility for the Lifeline program. At present, it is unclear when mail delivery service upon which these recertifications often depend will be adequately restored.

Rico) is equally uncertain. As it stands currently, the PR/USVI Recertification Waiver Extension Order applies to subscribers whose recertification date would fall between September 7, 2017 and March 31, 2018.¹⁷ Thus, for subscribers whose recertification date is April 1, 2018 or later, ETCs will need to provide a recertification notice beginning on February 1, 2018. At this point, there is no indication that the mail systems or power grids in Puerto Rico and the U.S. Virgin Islands will be sufficiently functional within the next two days such that it would be reasonable to expect recertification notices to reach affected subscribers. Telrite therefore respectfully submits that, in light of this ongoing and uncertain recovery period, an extension of the recertification waiver until April 30, 2018 is necessary.

III. GOOD CAUSE EXISTS TO EXTEND THE WAIVER

The Commission may waive any of its rules for good cause shown,¹⁸ and on delegated authority, the Bureau may waive the Commission's rules based on the same standard.¹⁹ Discretion to waive a rule may be exercised where the "particular facts make strict compliance inconsistent with the public interest."²⁰ Hardship, equity or more effective implementation of overall policy may also be considered.²¹ In short, grant of a waiver request is justified when the public interest would be served by such action.

¹⁷ See PR/USVI Recertification Waiver Extension Order ¶ 6.

¹⁸ See 47 C.F.R. § 1.3.

¹⁹ See 47 C.F.R. § 0.91(b); *see also* 47 C.F.R. § 0.291(a).

²⁰ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

²¹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

The Commission consistently has acknowledged the need for low-income consumers to have access to critical communications services during and after a catastrophic natural disaster.²² In issuing the Hurricane Irma Waiver Order, Hurricane Maria Waiver Order, and PR/USVI Recertification Waiver Extension Order, the Bureau acknowledged that good cause existed for temporarily granting relief from the Lifeline recertification requirements in Puerto Rico and the U.S. Virgin Islands, finding that “strict compliance” with the Lifeline program rules would be either “impracticable” or “inconsistent with the public interest” in the wake of these historic natural disasters.²³ Sadly, the damage sustained in Puerto Rico and the U.S. Virgin Islands by Hurricanes Irma and Maria has resulted in lengthy recovery processes that remain ongoing. Telrite therefore respectfully submits ample good cause also exists to extend the relief from the Lifeline recertification rules granted in the PR/USVI Recertification Waiver Extension Order until April 30, 2018. Granting this narrowly tailored Petition would serve the public interest because it would avoid the significant harm and endangerment to consumers that would be caused by de-enrolling Lifeline subscribers in Puerto Rico or the U.S. Virgin Islands simply because they cannot strictly

²² In 2005, the Commission established a temporary Lifeline program to provide relief to victims of Hurricane Katrina who were “without telecommunications service, unable to contact loved ones, make new living arrangements, or find post-hurricane employment.” *See Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up*, CC Docket No. 96-45, WC Docket No. 02-60, CC Docket No. 02-6, WC Docket No. 03-109, Order, FCC 05-178 (2005). The Commission’s actions following Hurricane Katrina reflect the general truth that “poor people are disproportionately impacted by natural disasters.” *See Addressing the Risk of Waste, Fraud and Abuse in the FCC’s Lifeline Program: Hearing Before the S. Committee on Commerce, Science, and Transportation*, 115th Cong. (Sept. 6, 2017) (Statement of Jessica J. Gonzalez, Deputy Director & Senior Counsel, Free Press and Free Press Action Fund) (internal cites omitted). And in the aftermath of Hurricane Maria, Chairman Pai made clear that despite the “catastrophic impact” of the storm, “the FCC stands ready to do whatever [it] can to help.” *See* FCC Press Release, “Chairman Pai Statement on Hurricane Maria” (Sept. 21, 2017); *see also* FCC Press Release, “Chairman Pai Meets with Officials in Puerto Rico” (rel. Nov. 7, 2017).

²³ *See* Hurricane Irma Waiver Order ¶ 1; Hurricane Maria Waiver Order ¶ 2; PR/USVI Recertification Waiver Extension Order ¶ 3.

adhere to the Commission's recertification requirements during the recovery period following an unprecedented natural disaster.

IV. CONCLUSION

For the foregoing reasons, the Bureau should grant this Petition and extend the temporary waiver of sections 54.405(e)(4) and 54.410(f) of the Commission's rules for Lifeline subscribers in Puerto Rico who cannot be successfully recertified using Puerto Rico's PAN database, and for Lifeline subscribers in the U.S. Virgin Islands, until April 30, 2018.

Respectfully submitted,

By: _____

John J. Heitmann

Jennifer Wainwright

KELLEY DRYE & WARREN LLP

3050 K Street NW, Suite 400

Washington, D.C. 20007

(202) 342-8400 (voice)

(202) 342-8451 (facsimile)

jheitmann@kelleydrye.com

Counsel for Telrite Corporation

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